THE HON'BLE SRI JUSTICE C.V. RAMULU

Thursday, 15th day of February,2007

W.P.No.10491 of 1997

Between:-

S.K. Mishra … Petitioner

and

The Regional Labour Commissioner
(Central) and the Authority under
Minimum Wages Act, Hyderabad,
and others … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.10491 of 1997

ORAL ORDER:

This Writ Petition is filed seeking a Mandamus declaring the Orders dated 11-11-1995 passed by the Regional Labour Commissioner and the Authority under the Minimum Wages Act, Hyderabad in Application No.104/94 as arbitrary and illegal.

Petitioner is the opposite party/management-Senior Divisional Commercial Manager, South Eastern Railway, Visakhapatnam. It has filed this Writ Petition being aggrieved by the said Order dated 11-11-1995, wherein the petitioner herein was directed to pay an amount of Rs.58,785-20 ps for four weekly offs to 280 applicants towards overtime payment (for the days they worked on weekly off) and Rs.1,079.60 towards two times compensation (for the difference of minimum wages to be paid) and Rs.52.30 towards overtime payment for the weekly off for each workman as per the list.

There is no necessity of going into all the details. The respondent-applicants are all working as Railway Licensed Porters. Railways evolved a system to engage the services of the licensed porters on alternative monthly rotation basis for the purpose of loading and unloading of parcels into and from brake-vans based on traffic requirements at different stations to supplement their income and they are paid wages on the pro-rata hourly basis for the actual hours of engagement, which is based on minimum rates payable to the unskilled workers as fixed by the local authorities. The services of the

porters are taken just at the time of arrival of passenger trains and they are relieved immediately after the completion of loading and unloading into brake-vans and they are free to carry luggage of the passengers during the remaining period at their own will and pleasure; as such, the engagement of Porters for loading and unloading of parcels into the brake vans is not a full time engagement nor they are being engaged with such assurance. The respondent-applicants stated that loading and unloading labour in Railways are covered under schedule employment within the meaning of Section 2(g) of the Minimum Wages Act,1948 (for short 'the Act') and they were paid wages less than the minimum wages fixed for their category of employment. However, after a detailed consideration of the matter, it was held by the Authority that the applicants are entitled for wages under the Act. Further, it was observed that they were not given day of rest after working 7 days as required under the provisions of Section 13(1)(b) and 14 of the Act and as per Rule 25(1)(b) of the Minimum Wages (Central) Rules. Therefore, they made claim for payment for overtime work they had carried out on rest days, at double rate of wages. Petitioner-management did not deny that the respondent-applicants had not worked on weekly offs, but contended that the provisions of Sections 13,14 and 18 of the Act will not be applicable to the workmen involved in the instant claim application. All these aspects were considered and the petitioner herein was directed to pay an amount of Rs.58,785-20 towards four weekly offs to 280 applicants. So far as this is concerned, there is no difficulty, since the Authority under the Act has considered it as per law.

However, the only contention of the learned counsel for the petitioner is that the respondent-applicants are not entitled for compensation twice the difference of wages for all the four weekly offs

and the said question is no more *res integra* in view of the Judgment of this Court reported in **DIVISIONAL RLY. MANAGER v. LABOUR ENFORCEMENT**[1], which was followed in Writ Petition No.571 of 1996, dated 19-10-2000.

The facts and the notification relied upon in the earlier cases and the present Writ Petition are one and the same. In fact, the said two cases and the present Writ Petition arise out of an Order passed by the very same Officer i.e. Regional Labour Commissioner and Authority under the Minimum Wages Act, Hyderabad dated 11-11-1995.

In view of the ratio laid down in the said Judgments, the impugned Order to the extent of awarding compensation, in addition to the difference of wages for the four weekly off days, is set aside and the impugned Order so far as directing payment of difference of minimum wages to the respondent-applicants is concerned, is confirmed.

Accordingly, the Writ Petition is disposed of. No costs.

15-2-2007

prk

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[1] 1998(1) ALT 40